

Nov 08, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRYAN PAUL HERNANDEZ (*also*
known as Selene Violet Henderson),
Plaintiff,
v.

No. 2:24-CV-00380-SAB

ORDER TO REMAND

JAY INSLEE,
Defendant.

Plaintiff, a civilly committed detainee currently housed at the Eastern State Hospital, filed a *pro se* Notice of Removal on November 4, 2024. ECF No. 1. Plaintiff did not pay the filing fee or properly seek leave to proceed *in forma pauperis*.

Plaintiff asks to remove “a motion to find RCW 71.05.320(4)(c)(ii)¹ unconstitutional” claiming “a State Supreme Court decision has rendered

¹ RCW 71.05.320(4)(c)(ii) provides: “In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to

1 proceedings in the State Courts futile.” ECF No. 1 at 1. Plaintiff attaches an “Order
2 Denying Motion to Declare Statute Unconstitutional” dated October 18, 2024, in
3 an apparent civil detention proceeding captioned, “In re the Detention of: BRYAN
4 HERNANDEZ AKA SELENE HENDERSON, Respondent[.]” in Spokane County
5 Superior Court case No. 23-6-01056-32. ECF No. 1-1. To the extent Plaintiff is
6 attempting bring this litigation to federal court rather than to properly appeal it
7 through the state appellate courts, Plaintiff may not do so.

8 REMOVAL AUTHORITY

9 Federal courts are courts of limited jurisdiction and “may not exercise
10 jurisdiction absent a statutory basis.” *Exxon Mobile Corp. v. Allapattah Servs.,*
11 *Inc.*, 545 U.S. 546, 552 (2005). Also, a federal court has “an independent
12 obligation to determine whether subject-matter jurisdiction exists, even when no
13 party challenges it.” *Hertz Corp. v. Friend*, 559 U.S. 7, 94 (2010). Concerning
14 removed cases, 28 U.S.C. § 1447(c) states, in pertinent part: “If at any time before
15 final judgment it appears that the district court lacks subject matter jurisdiction, the
16 case shall be remanded.” *See also* Fed. R. Civ. P. 12(h)(3) (“If the court
17 determines at any time that it lacks subject-matter jurisdiction, the court must
18 dismiss the action.”).

19 _____
20 suffer from a behavioral health disorder or developmental disability that results in
21 a substantial likelihood of committing acts similar to the charged criminal
22 behavior, unless the person presents proof through an admissible expert opinion
23 that the person's condition has so changed such that the behavioral health disorder
24 or developmental disability no longer presents a substantial likelihood of the
25 person committing acts similar to the charged criminal behavior. The initial or
26 additional commitment period may include transfer to a specialized program of
27 intensive support and treatment, which may be initiated prior to or after discharge
28 from the state hospital[.]”

1 Removal statutes are strictly construed. *See Moore-Thomas v. Alaska*
2 *Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). Section 1441(a) provides:

3 Except as otherwise expressly provided by Act of Congress, any civil
4 action brought in a State court of which the district courts of the United
5 States have original jurisdiction, may be removed by the *defendant* or
6 the *defendants*, to the district court of the United States for the district
7 and division embracing the place where such action is pending.

8 28 U.S.C. § 1441(a) (*italics added*). Likewise, Section 1446(a) states:

9 A *defendant* or *defendants* desiring to remove any civil action from a
10 State court shall file in the district court of the United States for the
11 district and division within which such action is pending a notice of
12 removal signed pursuant to Rule 11 of the Federal Rules of Civil
13 Procedure and containing a short and plain statement of the grounds for
14 removal, together with a copy of all process, pleadings, and orders
15 served upon such defendant or defendants in such action.

16 28 U.S.C. § 1446 (*italics added*).

17 This statutory language reveals that only defendants have the right to remove
18 an action from State court. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100,
19 104–09 (1941) (concluding that Congress intended to limit the right to remove an
20 action to defendants only and that a suit containing a counterclaim is not
21 removable by a plaintiff); *In re Walker*, 375 F.2d 678, 678 (9th Cir. 1967) (*per*
22 *curiam*) (“No right exists in favor of a person who, as plaintiff, has filed an action
23 in state court, to cause the removal of such action to a federal court.”); *In re*
24 *Hartford Litig. Cases*, 642 F. App’x 733, 736 (9th Cir. 2016) (unpublished) (“The
25 [appellants] were plaintiffs in the state court, and therefore cannot use the removal
26 statutes they invoke.”) (citing 28 U.S.C. §§ 1441, 1443, 1446).

27 The restriction to defendants of the right to remove a case is jurisdictional.
28 *See Shamrock*, 313 U.S. at 107 (stating that the restriction to defendants of the

1 right of removal “indicat[es] the Congressional purpose to narrow the federal
2 jurisdiction on removal”); *see also In re Walker*, 375 F.3d at 678 (affirming the
3 district court's holding that it was without jurisdiction because the plaintiff did not
4 have the right to remove its own case under 28 U.S.C. § 1441, 1443, 1446).

5 Furthermore, the civil commitment of those with behavioral health disorders
6 is a concern traditionally left to the states. *See Jackson v. Indiana*, 406 U.S. 715,
7 736 (1972) (“The States have traditionally exercised broad power to commit
8 persons found to be mentally ill.”); *Addington v. Texas*, 441 U.S. 418, 426 (1979)
9 (a “state has a legitimate interest under its *parens patriae* powers in providing care
10 to its citizens who are unable because of emotional disorders to care for
11 themselves; the state also has authority under its police power to protect the
12 community from the dangerous tendencies of some who are mentally ill.”); *Kansas*
13 *v. Hendricks*, 521 U.S. 346, 363 (1997) (stating that “tak[ing] measures to restrict
14 the freedom of the dangerously mentally ill” is a “legitimate nonpunitive
15 governmental objective” of a state).

16 Consequently, this Court finds that it lacks jurisdiction over Plaintiff’s
17 removal request concerning state court rulings issued regarding Plaintiff’s
18 detention and will direct that the case be remanded to state court pursuant to 28
19 U.S.C. § 1447(c).

20 Accordingly, **IT IS HEREBY ORDERED:**

21 1. Pursuant to 28 U.S.C. §§ 1447(c) and 1447(d), all further proceedings
22 in this case are **REMANDED** to Spokane County Superior Court in the State of
23 Washington, case No. 23-6-01056-32.

24 2. Pursuant to 28 U.S.C. § 1447(c), the Clerk shall mail a certified copy
25 of this Order to Remand to the Clerk of the Court for Spokane County Superior
26 Court.

27 3. The Clerk of Court shall transmit the record in this case to the Clerk
28 of the Court for Spokane County Superior Court.

1 4. The parties shall file nothing further in this matter. Rather, the parties
2 shall seek any further relief to which they believe they are entitled from the courts
3 of the State of Washington.

4 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
5 provide a copy to Plaintiff, and **close** the file in this case.

6 **DATED** this 8th day of November 2024.



11 *Stanley A. Bastian*

12 Stanley A. Bastian
13 Chief United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28